

Town of Amherst  
Zoning Board of Appeals - Special Permit  
*DECISION*

**Applicants:** Wild Iris, LLC (c/o Bob Pollak), 17B Montague Road, Amherst, MA 01002

**Owner:** Paul Jones, 232 Amity Street, Amherst, MA 01002

**Date Application filed with the Town Clerk:** March 5, 2007

**Nature of request:** Petitioner seeks to modify Special Permit ZBA FY2006-00029 to expand the restaurant into the space formerly occupied by Aristocrat Hair Salon.

**Location of property:** 17A Montague Road  
Map 5A, Parcel 78, B-VC zone.

**Legal notice:** Published in the Daily Hampshire Gazette on March 28 and April 4, 2007, and sent to abutters on March 26, 2007.

**Board members:** Barbara Ford, Hilda Greenbaum and Jane Ashby

**Submissions:**

The applicants submitted the following documents:

- A Parking Layout Plan showing the existing parking spaces in the vicinity of the restaurant;
- A Floor Plan showing the layout of the proposed expanded restaurant;
- A Management Plan for the expanded restaurant, to be renamed the “River Shark Café”;
- A drawing of the proposed sign.

Town staff submitted the following documents:

- From the Planning Department:
  - An aerial photograph of the site showing the surrounding neighborhood and the buildings and parking lot on the site;
  - A memorandum, dated April 10, 2007, commenting on the application;
  - Photographs of the front of the building showing the existing sign locations and the entryway;
  - Copies of previous Special Permits issued for the restaurant space:  
ZBA FY2006-00029, ZBA FY97-0053, ZBA FY93-29, ZBA FY82-59, ZBA FY74-54
- From the Fire Department, a memorandum dated March 15, 2007, commenting on the application;
- From the Health Department, a memorandum dated March 7, 2007, commenting on the application;

**Site Visit:** April 10, 2007

At the site visit the Board was met by Bob Pollak, the applicant. The Board observed the following:

- The location of the restaurant, on a heavily-traveled road (Route 63/Montague Road) in the North Amherst Village Center, with a church next door, and a library and automotive establishments across the road;

- The small shopping plaza which contains the restaurant, several other retail businesses and a post office;
- The large, shared parking lot that surrounds the commercial building;
- The Riverside Park Apartments located behind the commercial building;
- The interior of the restaurant and kitchen area, including a large pizza oven;
- The interior space of the former Aristocrat Hair Salon, now empty, into which the current restaurant plans to expand;
- The garbage and recycling area in the rear parking lot;
- The rear doors that exit onto the rear parking lot;
- The proposed location of the main sign, above the entryway;
- The neon shark's teeth in the window, along with other miscellaneous signs on the front door;
- The existing goose-neck lamps, over the existing sign.

**Public Hearing:** April 12, 2007

Bob Pollak presented the petition. He made the following comments:

- The restaurant has been operating since July 2006 as Pizza Shark Plus;
- The restaurant offers in-house dining, take-out and delivery services;
- The current hours of operation are 11:30 a.m. to 9:00 p.m. Sunday through Thursday and 11:30 a.m. to 2:00 a.m. on weekends for late night deliveries; however, the existing Special Permit allows the restaurant to be open until 2:00 a.m. seven days a week;
- The space next door has been vacated by Aristocrat Hair Salon, providing the applicant with an opportunity for expansion;
- Pizza Shark Plus currently has 19 seats; Mr. Pollak would like to increase the seating in the expanded restaurant to a total of 50 or more seats;
- The new hours of operation will be 7:00 a.m. to 2:00 a.m. seven days a week;
- The restaurant will continue to offer in-house dining, take-out and delivery service;
- Currently the in-house dining operates on a self-serve basis; the applicant may wish to offer table service in the future;
- The applicant would like to have the option to stay open until 2:00 a.m. seven days a week as the existing permit [ZBA FY2006-00029] allows; he would also like to have the option of being open to serve breakfast, at 7:00 a.m.;
- There is no plan to serve alcohol;
- The total number of employees on the premises at one time, excluding the delivery drivers, is now four; the drivers are part-time and are not constantly on the premises;
- A total of 25 employees may be associated with the restaurant; however they will not all be working at the same time;
- Deliveries will come and go through the rear door;
- The Pizza Shark van will not be used as a delivery vehicle; it is used for on-site preparation; the van travels to a site and sets up and then sells out of the van;
- The van has been parked for the past four (4) months at 1185 North Pleasant Street;
- Mr. Pollak has a lease arrangement to park the van at 1185 North Pleasant Street; the van will not be parked on-site at the Montague Road property;
- The pizza delivery drivers will use their own vehicles.

The Board discussed the number of employees with Mr. Pollak and determined that there may be a maximum of ten (10) employees on the premises at one time, including delivery drivers, in the expanded restaurant.

There was a discussion about the actual number of seats that exist in the current space and the number of seats that will be provided by the expanded restaurant. The current permit allows the restaurant to have up to 32 seats, even though it only currently has 19. Mr. Pollak would like to increase the total number of seats allowed to 59. This amounts to an increase of 27 seats over the current allotment.

Ms. Ford stated that the Board may ask for a sample menu. She also asked about the handling of cooking oil and grease.

Mr. Pollak stated that there is a grease trap in the kitchen. The kitchen of the restaurant will not be expanded in size and no frialator will be added. The proprietors try not to cook with oil and there is no deep frying.

Ms. Ford stated that the Board may still wish to keep the condition about the management of oil and grease [Condition #9 of ZBA FY2006-00029].

Ms. Ashby asked about the comments made by the Health Department, in its memorandum dated March 7, 2007, regarding the vegetable prep sink. Mr. Pollak stated that the proprietors are still working on the location of the vegetable prep sink.

Ms. Ashby asked whether the location of the seating, as shown on the plans, is permanent. Mr. Pollak stated that the seating will not be permanently affixed to the floor but the intention is that it will stay where it is shown on the plan.

Ms. Greenbaum asked about music. Mr. Pollak stated that there will be a sound system, but no live entertainment.

Ms. Greenbaum asked about the color of the sign. Mr. Pollak stated that he would like to come back to the Board with the final design for the sign.

The Board asked Mr. Pollak to return with a final revised Management Plan as well.

Dan Burbine of 1184 North Pleasant Street stated that he has visited the restaurant and that he has been impressed by the professionalism and courtesy of the staff. He stated that the parking lot, though large, is always busy. He noted that the restaurant has a "nice level of customers" and serves a "good product". He is happy that the business is working well.

Marie Twohig of 12 Meadow Street stated that she had attended the meeting to listen but that she is pleased with the proposal.

Ms. Ford asked about parking. Mr. Pollak stated that the parking will be the same as it currently exists. The parking lot has been adequate for his business along with the others who occupy the building.

Ms. Greenbaum asked if the interior décor would be the same as in the existing restaurant. Mr. Pollak stated that it will change slightly for the expanded space but that the concept of using the wall maps would be the same and the décor would be similar to what is now in the existing restaurant.

The Board asked about all of the signs in the front door window. Mr. Pollak stated that he would eliminate the clutter of signs in the windows, but that members of the community like to post signs at his establishment. The Board suggested that Mr. Pollak consider installing a bulletin board inside the restaurant for use by members of the community.

Bonnie Weeks, Building Commissioner, stated that the number and size of signs are limited if the signs can be seen from the outside. Ms. Greenbaum reiterated the Board's concerns about "sign clutter".

Ms. Greenbaum asked about the lighting level inside the restaurant. Ms. Weeks explained that this is an issue that could have an impact if the restaurant became similar to a "night club". Ms. Weeks stated that the criteria for a night club include low level lighting, indistinct seating or exits, loud music, late hours and service of alcohol. A restaurant does not need to have all of these conditions present to be considered a night club. Ms. Weeks stated that the restaurant should continue to offer the [dinner] menu until closing time.

Ms. Greenbaum noted that the expanded restaurant will have two exits in the front and two exits in the rear.

Ms. Ford stated that there would be a total of 69 people in the restaurant if there are 59 seats and 10 employees present at one time. Ms. Weeks stated that the number of occupants may be limited by the number of bathrooms. [According to the plan presented at the public hearing, there is one existing employees' bathroom and there will be two universally-accessible bathrooms added in the expanded space.] The Board discussed the number of people who should be allowed in the restaurant, including those seated, those standing and waiting to be served and the employees.

Ms. Ashby MOVED to close the evidentiary portion of the public hearing. Ms. Greenbaum SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

### **Public Meeting – Discussion**

At the public meeting the Board discussed the conditions that they would impose if they granted the petition. The Board also discussed its findings.

### **Public Meeting – Findings:**

Under Zoning Bylaw Section 10.38 the Board found that:

- 10.38, 10.381, 10.382 & 10.383 – The proposal is suitably located in the neighborhood in which it is proposed, since the shopping plaza is in a B-VC zoning district, designed for a mix of businesses. A pizza restaurant has existed at this location for over 20 years and has not constituted a nuisance to abutters, vehicles or pedestrians. The current management will not alter the operation of the restaurant at all, except to expand the space and to open at 7:00 a.m. The van, which provides food service elsewhere, will be stored off-site.
- 10.384, 10.386 & 10.387 – Adequate facilities are provided for the proper operation of the proposed use. The restaurant exists in a shopping plaza where adequate parking, lighting, snow removal, and other aspects of site management are provided. There are two driveways, one for entering and one for exiting the plaza. A condition of the permit allowing additional directional signage on site will improve customers' ability to differentiate the entry drive from the exit drive. The sign for the business will be similar in size to the previous sign, but less intrusive, and will be reviewed and approved by the Board at a public meeting.
- 10.388 – The proposal provides adequate space for off-street loading and unloading of goods, since the back of the building is paved for deliveries. Customers park in the front, separate from deliveries.
- 10.389 – The proposal provides adequate methods of disposal, since the plaza provides containers for waste/recycling. A condition of this permit addresses the safe disposal of cooking oil/grease.
- 10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

**Public Meeting – Zoning Board Decision**

Ms. Greenbaum MOVED to approve the findings as drafted. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to approve the findings.

Ms. Ashby MOVED to approve the application with the conditions as drafted. Ms. Greenbaum SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, to modify Special Permit ZBA FY2006-00029 to expand the restaurant into the space formerly occupied by Aristocrat Hair Salon, as applied for by Wild Iris, LLC, at 17A Montague Road, (Map 5A, Parcel 78, B-VC Zone).

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BARBARA FORD

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HILDA GREENBAUM

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JANE ASHBY

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2007 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2007.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2007  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
in the Hampshire County Registry of Deeds.

Town of Amherst  
Zoning Board of Appeals

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, to modify Special Permit ZBA FY2006-00029 to expand the restaurant into the space formerly occupied by Aristocrat Hair Salon, as applied for by Wild Iris, LLC, at 17A Montague Road, (Map 5A, Parcel 78, B-VC Zone), with the following conditions:

1. Seating shall be limited to a total of 59 seats, including tables and/or stools.
2. The total capacity of the restaurant shall be limited to 75 people at one time, including people seated, people standing and employees.
3. No more than ten (10) employees shall be present on the premises at one time, including delivery drivers.
4. No alcoholic beverages shall be served or consumed on the premises.
5. The hours of operation for the restaurant shall be 7:00 a.m. to 2:00 a.m. seven (7) days a week.
6. Deliveries shall be made to the back of the restaurant between 9:00 a.m. and 5:00 p.m., via the rear parking lot.
7. The pizza van shall be stored overnight at 1185 North Pleasant Street.
8. The proposed sign design, including materials, size and colors shall be submitted to the Board for approval at a public meeting prior to the issuance of a certificate of occupancy.
9. The total area of signage visible from the exterior shall not exceed ten percent (10%) of the façade controlled by the tenant.
10. The final revised management plan, floor plan and a sample menu shall be submitted to the Board for review and approval at a public meeting prior to the issuance of a certificate of occupancy.
11. The expanded restaurant shall be managed according to the revised management plan referred to in Condition #10 above, which will be on file with the records of the Zoning Board of Appeals located in the Planning Department.
12. The expanded restaurant space shall be built according to the final revised plan to be reviewed and approved by the Board at a public meeting and which will be on file with the records of the Zoning Board of Appeals located in the Planning Department.
13. Environmentally safe storage and disposal of cooking oil and grease shall be maintained. A plan for safe disposal of the cooking oil shall be submitted to the Board for approval at a public meeting.

14. There shall be no live entertainment; and the level of sound of pre-recorded music audible outside of the restaurant, in the parking lot, shall not exceed the ambient noise level in the parking lot at the property line.

15. A distinct seating pattern shall be maintained. The overall number of chairs and tables shall remain as shown on the final revised floor plan referred to in Condition #12 above. The arrangement of the chairs and tables may be reconfigured as long as the arrangement continues to provide adequate emergency egress.

16. The complete dinner menu shall be served until one (1) hour before closing.

17. Upon transfer of ownership the new owner shall submit a management plan to the Board for review and approval at a public meeting.

18. In order to meet the concerns of the Board with regard to the safe ingress and egress from the parking lot the Board has asked the applicant to request that the property owner install appropriate entrance and exit signs (to replace the existing signs) at the entrance and exit driveways, in accordance with Section 8.41 of the Zoning Bylaw. To facilitate the installation of these signs the Board has agreed that the signs for the entrance and exit from the parking lot ("Entrance Only" and "Exit Only") may exceed the size limits for signage on site. The location, size and design of the signage shall be approved by the Board at a public meeting.

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BARBARA FORD, Chair  
Amherst Zoning Board of Appeals

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DATE